

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:CTR:HAR:TL-N-1179-99

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date: **FEB 24 1999**

to: Group Manager Examination Group 1107,
Connecticut-Rhode Island District
Attn: Revenue Agent Gary S. Harter

from: District Counsel, Connecticut-Rhode Island District, E. Hartford

subject: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This is in response to the oral request for advice we received from you on February 2, 1999, concerning whether it is possible to extend the statute of limitations to assess the partnership liability resulting from a defaulted final notice of partnership administrative adjustment. We believe that the statute of limitations can be extended if the appropriate language is used in the Form 872.

Facts:

[REDACTED] was a partner in a partnership in [REDACTED]. A timely final notice of partnership administrative adjustment (FPAA) was mailed to the partnership on [REDACTED]. The partnership defaulted on the FPAA. As a result of the default there is some \$[REDACTED] in additional partnership income attributable to [REDACTED] for [REDACTED]. Although the audit of the [REDACTED] to [REDACTED] cycle is winding down, the examination team does not expect to be ready to determine the tax liability for [REDACTED] for [REDACTED] until after the statute of limitations for the assessment of the partnership

liability expires on [REDACTED]. You have asked us if it is possible to extend the time to assess the partnership liability beyond [REDACTED].

Analysis:

Under I.R.C. § 6229(a), the period for assessing a tax attributable to partnership items does not expire until [REDACTED] years after the date upon which the partnership return was filed or the last date for filing such returns, whichever is later. I.R.C. § 6229(b)(1)(A) provides that the Service and an individual partner may, by agreement, extend the assessment for that partner.^{1/} However, to be effective as to partnership items, any agreement between the partner and the Service executed under I.R.C. § 6501(c)(4) to extend the period for assessment relating to that particular partner must indicate that it applies to tax attributable to partnership items. While no specific language is required to meet this standard, it must be clear from the agreement that it applies to partnership items. See Foam Recycling Assoc. v. Commissioner, T.C. Memo. 1992-645.

We believe that if the following language is added to the standard Consent to Extend Time to Assess Tax (Form 872),^{2/} then the consent will be effective to extend the period of limitations for assessment of tax relating to all partnership items on the corporate return.

Without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items (see section 6231(a)(3)), affected items (see section 6231(a)(5)), computational adjustments (see section 6231(a)(6)), and partnership items converted to nonpartnership items (see section 6231(b)). This agreement extends the period for filing a petition for

^{1/} A consent to extend the time to assess tax attributable to items of a partnership or S corporation that have converted under section 6231(b) of the Internal Revenue Code (Form 872-F) cannot be used because a defaulted FPAA does not cause a conversion of partnership items to nonpartnership items.

^{2/} If a special consent to extend the time to assess tax (Form 872-A) is used instead of a consent to extend the time to assess tax (Form 872), then the following additional language must be inserted: The issuance of a notice of deficiency will not terminate this agreement under paragraphs (1) and/or (2) for items described by this paragraph.

adjustment under section 6228(b) but only if a timely request for administrative adjustment is filed under section 6227. For partnership items which have converted to nonpartnership items, this agreement extends the period for filing a suit for refund or credit under section 6532, but only if a timely claim for refund is filed for such items. In accordance with paragraph (1) above, an assessment attributable to a partnership shall not terminate this agreement for other partnerships or for items not attributable to a partnership. Similarly, an assessment not attributable to a partnership shall not terminate this agreement for items attributable to a partnership.

If you have any questions, please contact the attorney assigned to this case, Joseph F. Long, at (860) 290-4090.

GERALD A. THORPE
District Counsel

By: _____
JOSEPH F. LONG
Attorney